

REMARKS

Status of the Claims

Claims 23-40 are pending in the application.

Claims 23-40 stand rejected.

The Rejection Under 35 U.S.C. 102(e).

The Examiner has rejected claims 23-40 under 35 U.S.C. 102(e) as being anticipated by Tanaka et al. USP 5,709,895, (cols. 3-7) The Examiner holds:

Tanaka et al. discloses heating in an extruder a mixture containing isomalt, modified starch and water, at a temperature up to 200°C, to lower the moisture content of the mixture to 0.5 to 6%, while adding flavor and colorants. After heating, the mixture is cooled to solidify the mixture. The solid matter obtained is then ground into pieces of a size 20-60 mesh.

Reconsideration and withdrawal is respectfully requested for the reasons as follow.

Tanaka et al. were concerned with the problem in the art of providing stable carbohydrate-encapsulated flavoring agents to be used in sugar free products. The Tanaka et al. solution is a process which comprises the use of an encapsulating matrix which is a composed of both a hydrogenated saccharide and a modified starch. The two matrix formers are required to be present in a weight ratio ranging from 15:85 to 85:15 on a solid basis. At col 4, lines 49-52, Tanaka et al. list those hydrogenated saccharides as "xylitol, lactitol, maltitol, isomalt ... and hydrogenated corn syrup". At col 3, lines 8-13, Tanaka et al. describe their invention and distinguish it from prior art methods which combined flavorants with hydrogenated saccharides alone as follows:

To solve the above-mentioned problem, the present inventors have noted hydrogenated saccharides as compounds having a low cariogenicity. These compounds generally have a high hygroscopicity and therefore it is difficult to obtain capsules capable of being stored for a prolonged period of time from the compounds only.

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Tanaka et al. therefore expressly state that the flavor capsule provided by the method could not be achieved by the use of hydrogenated saccharides, such as isomalt, alone.

Applicants' invention pertains to a process for the preparation of a crunch additive which consists solely of isomalt. Applicants have claimed the process (claims 32-40) and the additive *per se* as prepared by that process, i.e., product-by-process claims (claims 23-31). The process requires the steps of heating isomalt alone to a temperature above 130°C followed by cooling and granulation to a particle size greater than 50 mesh. The resultant product has applicants' goal of a required crunch texture. The isomalt may contain optional ingredients such as flavoring agents, coloring agents, and most minor quantities of other polyols which are incidental to the invention, but no component other than isomalt is used to provide the crunch product.

Applicants' process and product are clearly not identical to and can be distinguished over the Tanaka et al. teaching. As the Examiner notes, and as discussed above, Tanaka et al. disclose a combination of, *inter alia*, isomalt and a modified starch and discuss the different and necessary contributions each make to the encapsulating matrix particularly the required presence of the starch to provide a stable material. There is no teaching in Tanaka et al. of a product or process which does not use this combination, i.e., as Tanaka et al. state, there is no invention absent the mixture. Further and pertinent, is the Tanaka et al. requirement of the presence of the flavorant. The stated purpose of the Tanaka et al. invention is to provide a stable flavorant material. There is no Tanaka et al. teaching of a product absent the flavorant.

Tanaka et al. do not provide one skilled in the art with a teaching, either by written description or by example, of a granulated isomalt additive *per se*. Tanaka et al. therefore, do not expressly disclose nor inherently teach applicants' claimed invention. In view of the above applicants respectfully submit that the rejection of claims 23-40 under 35U.S.C. 102(e) should be withdrawn.

Conclusion

In view of the above applicants believe this application is in condition for allowance. Favorable action is solicited. If any questions remain, the resolution of which would be advanced by conference (telephonic or personal) with applicants' agent, the Examiner is invited to contact said agent at the telephone or the fax number noted below.

Respectfully submitted,

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